

BOARD OF EQUALIZATION RULES FOR TAX APPEALS

California Code of Regulations
Title 18. Public Revenues
Division 2.1. State Board of Equalization – Rules for Tax Appeals
Chapter 4: Appeals from Actions of the Franchise Tax Board

ARTICLE 5: DECISIONS, OPINIONS, AND FRIVOLOUS APPEAL PENALTIES

5452. FORMAL OPINIONS.

(a) Definition. A “Formal Opinion” is a written decision that contains the findings of fact and conclusions of law that form the basis of the Board’s decision on an appeal and which is intended to set precedent. The Formal Opinion does not represent or reflect the Board’s decision on the appeal unless and until it is adopted by the Board.

(b) Preparing the Formal Opinion. The Appeals Division will prepare a Formal Opinion when an appeal is submitted for decision under section 5441 and the Appeals Division determines that a Formal Opinion might be appropriate, or when the Board orders the preparation of a Formal Opinion. The Appeals Division must submit the Formal Opinion to the Board Proceedings Division either upon completion or within any deadline set by the Board. The Chief Counsel may extend the time period for submitting the Formal Opinion upon a showing of reasonable cause and with the consent of the Board Chair.

(c) Notice of Formal Opinion. When the Board orders the Appeals Division to prepare a Formal Opinion, the Appeals Division will promptly send a written notice to the parties that contains the following:

(1) A brief explanation of any Board action taken on the appeal, including any decision on the outcome of the appeal and the order to prepare a Formal Opinion;

(2) A statement that the time period for filing a Petition for Rehearing will not begin until the Board adopts the Formal Opinion, or until the Board otherwise decides the appeal without adopting the Formal Opinion; and

(3) If the appeal involves an unpaid liability that is subject to the accrual of interest, a statement that interest will continue to accrue until the liability is paid in full.

(d) Adoption; Date of Decision. When the Appeals Division prepares a Formal Opinion, the Opinion will be submitted to the Board for adoption as a non-appearance matter and remains confidential until adopted by the Board. The date on which the Board votes to adopt the Formal Opinion, or votes to decide the appeal without adopting the Formal Opinion, is the date of the Board’s decision for purposes of this chapter.

(e) Reasons for Issuing a Formal Opinion. In determining whether a Formal Opinion might be appropriate, the following factors are considered:

(1) Whether the Opinion would establish a new rule of law, apply an existing rule to a set of facts significantly different from those stated in published opinions, or modify or repeal an existing rule;

(2) Whether the Opinion would resolve or create an apparent conflict in the law;

(3) Whether the Opinion would involve a legal issue of continuing public interest; and

(4) Whether the Opinion would make a significant contribution to the law by reviewing either the development of a common law rule or the legislative or judicial history of a provision of a constitution, statute, or other written law.

The list of factors in this subdivision is not intended to be exclusive. The Board and the Appeals Division may consider other relevant factors.

(f) Citation permitted. Any Formal Opinion may be cited as precedent in any appeal or other proceeding before the Board, unless the Opinion has been depublished, overruled, or superseded.

Note: Authority cited: Government Code section 15606.

Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.